



9110-04-P

## **DEPARTMENT OF HOMELAND SECURITY**

### **Coast Guard**

### **33 CFR Part 165**

**[Docket Number USCG-2020-0600]**

**RIN 1625-AA00**

**Safety Zone; East River, New York, NY**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

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**SUMMARY:** The Coast Guard is establishing a temporary safety zone for navigable waters of the east channel of the East River between the Roosevelt Island Bridge (mile 6.4) and Gibbs Point approximately 800 yards northeast of the bridge. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by the installation of one TriFrame with three attached underwater turbines, associated cabling and 4 to 6 Private Aids to Navigation. When enforced, entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port New York.

**DATES:** This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] through 11:59 pm, December 31, 2020. For the purposes of enforcement, actual notice will be used from 7 am, October 22, 2020 through [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2020-0600 in the “SEARCH” box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Mr. Jeff Yunker, Sector New York Waterways Management Division; U. S. Coast Guard; telephone 718-354-4195, email [jeffrey.m.yunker@uscg.mil](mailto:jeffrey.m.yunker@uscg.mil).

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	<b>Federal Register</b>
NPRM	Notice of proposed rulemaking
PATON	Private Aids to Navigation
RITE	Roosevelt Island Tidal Energy Project
§	Section
U.S.C.	United States Code

**II. Background Information and Regulatory History**

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the contractor did not provide enough notice that three barges, three tugs and three work vessels will be conducting heavy lift operations and installing 4 to 6 Private Aids to Navigation (PATON) in the east channel of the East River, north of the Roosevelt Island

Bridge while installing one TriFrame with three underwater turbines for the RITE Project. The USACE is issuing a permit for this installation and immediate action is needed to respond to the potential safety hazards associated with heavy lift operations. It is impracticable to publish an NPRM because we must establish this safety zone by October 22, 2020. The Coast Guard is publishing this rule to be effective through December 31, 2020 in case the project is delayed due to unforeseen circumstances.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable because immediate action is needed to respond to the potential safety hazards associated with multiple construction vessels operating within a confined area of the East River.

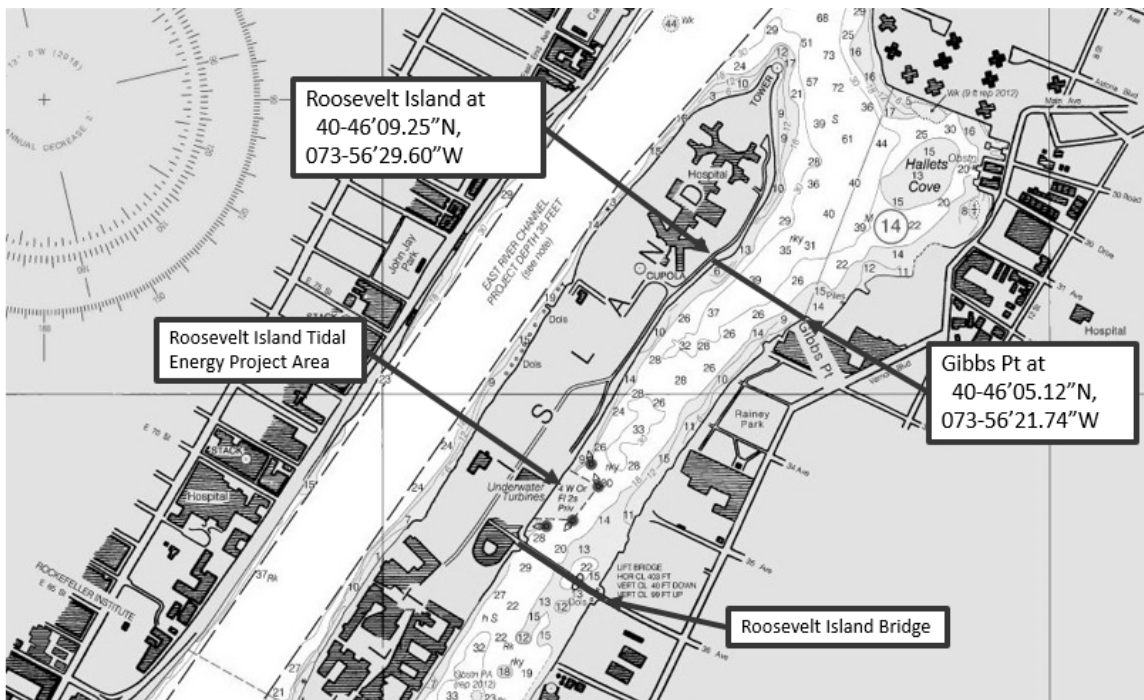
### **III. Legal Authority and Need for Rule**

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port New York (COTP) has determined that potential hazards associated with installation of the RITE Project TriFrame with three turbines and associated PATON marking this installation on October 22, 2020, will be a safety concern for anyone in the East River, east of Roosevelt Island, between the Roosevelt Island Bridge (mile 6.4) and Gibbs Point. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while nine tugs, barges and work vessels are installing one TriFrame with three underwater turbines and 4-6 PATON marking the RITE Project area.

### **IV. Discussion of the Rule**

This rule establishes a safety zone from October 22 through December 31, 2020.

The safety zone will cover all navigable waters of the East River east of Roosevelt Island between the Roosevelt Island Bridge (mile 6.4) and Gibbs Point being used by vessels and personnel to install Phase 1 of the RITE Project.



We anticipate enforcing the safety zone during the heavy lift operations for installation of the RITE Project TriFrame with three turbines scheduled from approximately 7 a.m. until 11 p.m. on October 22, 2020. The duration of the zone is intended to protect personnel, vessels, and the marine environment in these constrained navigable waters while the project and PATON marking the project area are being installed. When enforced no vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. The Coast Guard is publishing this rule to be effective through December 31, 2020 in case the project is delayed due to unforeseen circumstances.

## V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

*A. Regulatory Planning and Review*

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, location, duration, and time-of-year of the safety zone. Vessel traffic will be able to safely transit around this safety zone which would impact a small designated area of the East River for approximately 16 hours during the Fall when vessel traffic is normally low. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the zone, publish the zone in the Local Notice to Mariners, and the rule would allow vessels to seek permission to enter the zone.

*B. Impact on Small Entities*

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their

fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

### *C. Collection of Information*

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

### *D. Federalism and Indian Tribal Governments*

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

*E. Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

*F. Environment*

We have analyzed this rule under Department of Homeland Security Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321–4370f), and have determined

that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting only 16 hours that will prohibit entry between the Roosevelt Island Bridge (mile 6.4) and Gibbs Point being used by vessels, machinery and personnel to install Phase 1 of the RITE Project and 4-6 PATON marking the project area. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023-01-001-01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the ADDRESSES section of this preamble.

#### *G. Protest Activities*

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

#### **List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

#### **PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS**

1. The authority citation for part 165 continues to read as follows:

**Authority:** 46 U.S.C. 70034, 70051; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5;

Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T01-0600 to read as follows:

**§ 165.T01-0600 Safety Zone; East River, New York, NY.**

(a) *Location.* The following area is a safety zone: All waters of the East River, from surface to bottom, east of Roosevelt Island, upstream of the Roosevelt Island Bridge (mile 6.4) and downstream of a line connecting the following points: Gibbs Point at (pa) 40°46'05.12"N, 073°56'21.74"W to Roosevelt Island at (pa) 40°46'09.25"N, 073°56'29.60"W. These coordinates are based on NAD 83.

(b) *Definitions.* As used in this section, designated representative means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port New York (COTP) in the enforcement of the safety zone.

(c) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

(2) To seek permission to enter, contact the COTP or the COTP's representative by VHF-Channel 16 or at 718-354-4353. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Enforcement period[s]*. This section is effective from October 22 through December 31, 2020 but will only be enforced when Roosevelt Island Tidal Energy Project heavy lift operations are in progress.

Dated: October 20, 2020

Jason P. Tama,  
Captain, U.S. Coast Guard,  
Captain of the Port New York.

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